

109TH CONGRESS
2D SESSION

S. 2595

To amend the Small Business Investment Act of 1958 to modernize the treatment of development companies.

IN THE SENATE OF THE UNITED STATES

APRIL 6, 2006

Mr. KERRY (for himself and Mr. PRYOR) introduced the following bill; which was read twice and referred to the Committee on Small Business and Entrepreneurship

A BILL

To amend the Small Business Investment Act of 1958 to modernize the treatment of development companies.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS; DEFINI-**
4 **TIONS.**

5 (a) SHORT TITLE.—This Act may be cited as the
6 “504 Loan Program Modernization Act of 2006”.

7 (b) TABLE OF CONTENTS.—The table of contents for
8 this Act is as follows:

Sec. 1. Short title; table of contents; definitions.

Sec. 2. Findings and purposes.

Sec. 3. Authorizations for 504 Loan Program.

Sec. 4. Certified development company economic development.

Sec. 5. Definitions.

Sec. 6. Eligibility of development companies to be designated as certified development companies; authority to issue debentures; providing an area of operational authority, funding restrictions, and ethical requirements.

Sec. 7. Conforming amendments.

Sec. 8. Definition of rural areas.

Sec. 9. Businesses in low-income areas.

Sec. 10. Combinations of certain goals.

Sec. 11. Repeal of sunset on reserve requirements for premier certified lenders.

Sec. 12. Refinancing.

Sec. 13. Fees.

Sec. 14. Additional equity injections.

Sec. 15. Loan liquidations.

Sec. 16. Closing costs.

Sec. 17. Maximum 504 and 7(a) loan eligibility.

Sec. 18. Technical correction.

Sec. 19. Premier Certified Lenders Program report.

Sec. 20. Regulations.

1 (c) DEFINITIONS.—In this Act—

2 (1) the terms “Administration” and “Adminis-
3 trator” means the Small Business Administration
4 and the Administrator thereof, respectively;

5 (2) the term “Premier Certified Lenders Pro-
6 gram” means the program established under section
7 508(a) of the Small Business Investment Act of
8 1958 (15 U.S.C. 697e(a)); and

9 (3) the term “504 Loan Program” means the
10 program to provide financing to small business con-
11 cerns by guarantees of loans under title V of the
12 Small Business Investment Act of 1958 (15 U.S.C.
13 695 et seq.), which are funded by debentures guar-
14 anteed by the Administrator.

15 **SEC. 2. FINDINGS AND PURPOSES.**

16 (a) FINDINGS.—Congress finds that—

1 (1) in pursuing its mission of aiding small busi-
2 nesses, the Administration provides small businesses
3 with access to credit, primarily by guaranteeing
4 loans through its 7(a) and 504 Loan Programs;

5 (2) the 504 Loan Program provides long-term,
6 fixed-rate financing to growing small businesses for
7 expansion or modernization, primarily of real estate
8 and large equipment;

9 (3) the 504 financing is delivered through cer-
10 tified development companies (in this section re-
11 ferred to as “CDCs”), about 270 typically pre-
12 existing nonprofit corporations, established to con-
13 tribute to the economic development of their commu-
14 nities;

15 (4) during the 5 years preceding the date of en-
16 actment of this Act, 504 loans have slightly in-
17 creased to Hispanics and Asians, but have been flat-
18 level funded to African Americans, with 2 percent of
19 the loans, and have decreased in loans to women,
20 from 19 percent to 15 percent;

21 (5) the CDC industry and the 504 Loan Pro-
22 gram have experienced unprecedented structural
23 changes, such as the shift of all 504 loan processing,
24 loan servicing and liquidation from 70 Administra-
25 tion district offices to 1 or 2 centers in the country;

1 (6) in 2004, the Administration adopted regula-
2 tions that allowed for Statewide and multistate CDC
3 operations, resulting in increased competition and
4 program growth in many areas of the country, with
5 limited accountability measures to ensure that CDCs
6 are investing in local economic development activities
7 in each State as they expand; and

8 (7) such changes require Congress to examine
9 the 504 Loan Program and the industry and set a
10 statutory course that ensures that the intent and the
11 mission of CDCs and the 504 Loan Program for the
12 future are clearly established as local economic de-
13 velopment.

14 (b) PURPOSES.—The purpose and intent of this Act
15 are—

16 (1) to make a clear distinction between non-
17 profit and for-profit lending practices through the
18 preservation of the CDCs as non-profit economic de-
19 velopment intermediaries that are an essential ele-
20 ment in Congress’ and the Administration’s mission
21 to assist small businesses to foster local economic
22 development through job creation and investment in
23 all our communities;

24 (2) to reconfirm the statutory intent of CDCs
25 as originally established in 1958 to provide small

1 business programs, services, and assistance that for-
2 profit lenders do not provide;

3 (3) to direct the Administration within 90 days
4 of the date of enactment of this Act to report to the
5 Committee on Small Business and Entrepreneurship
6 of the Senate and the Committee on Small Business
7 of the House of Representatives on how the Admin-
8 istration could implement 1 closing, rather than 2 in
9 the 504 Loan Program, and potentially save the bor-
10 rower thousands in funds and retain outstanding
11 participation of private lenders;

12 (4) to direct the Administration to report on
13 the utilization of the Premier Certified Lender Pro-
14 gram over the past 3 years, specifically outlining
15 how many 504 loans have been processed through
16 the program, what difficulties have been encountered
17 in making these loans, and how the number of loans
18 in the program could be increased or streamlined;

19 (5) to establish the expansion of business in
20 low-income communities as a separate public policy
21 goal to highlight the need for CDCs to include such
22 goal as a primary objective in future projects and
23 outreach to underserved populations;

24 (6) to ensure accountability as CDC operations
25 expand into contiguous States through timely au-

1 thorizations by the Administrator to operate in
 2 multistates and require that CDCs use excess funds
 3 for local economic development projects in the area
 4 of operations where such funds were generated and
 5 submit an annual report to the Administrator of
 6 such projects in each State of operation;

7 (7) to provide small businesses which need both
 8 long-term fixed asset financing through the 504
 9 Loan Program and shorter term working capital and
 10 equipment financing through the 7(a) loan program
 11 the option of utilizing both Administration loan
 12 guaranty programs to their maximum amount;

13 (8) to direct the Administration to require that
 14 504 defaulted loan liquidations and recoveries be
 15 processed by CDCs or their designated third-party
 16 contractors, and that CDCs be compensated for the
 17 cost of such liquidation activities; and

18 (9) to direct the Administration to establish an
 19 incentive program directed to CDCs that foreclose
 20 and liquidate defaulted loans.

21 **SEC. 3. AUTHORIZATIONS FOR 504 LOAN PROGRAM.**

22 Section 20 of the Small Business Act (20 U.S.C. 631
 23 note) is amended by adding at the end the following:

24 “(f) FISCAL YEAR 2007.—For the program author-
 25 ized under section 7(a)(13) and the 504 Loan Program,

1 the Administrator is authorized to make \$8,500,000,000
 2 in financings, and there are authorized to be appropriated
 3 to the Administrator such sums as are necessary to carry
 4 out such programs.

5 “(g) FISCAL YEAR 2008.—For the program author-
 6 ized under section 7(a)(13) and the 504 Loan Program,
 7 the Administrator is authorized to make \$9,500,000,000
 8 in financings, and there are authorized to be appropriated
 9 to the Administrator such sums as are necessary to carry
 10 out such programs.

11 “(h) FISCAL YEAR 2009.—For the program author-
 12 ized under section 7(a)(13) and the 504 Loan Program,
 13 the Administrator is authorized to make \$10,500,000,000
 14 in financings, and there are authorized to be appropriated
 15 to the Administrator such sums as are necessary to carry
 16 out such programs.”.

17 **SEC. 4. CERTIFIED DEVELOPMENT COMPANY ECONOMIC**
 18 **DEVELOPMENT.**

19 Section 504 of the Small Business Investment Act
 20 of 1958 (15 U.S.C. 697a) is amended—

21 (1) by striking the section heading and insert-
 22 ing the following: “**PRIVATE DEBENTURE SALES**
 23 **AND PROGRAM NAME**”;

24 (2) by redesignating subsections (a) and (b) as
 25 subsections (b) and (c), respectively; and

1 (3) by inserting before subsection (b) the fol-
 2 lowing:

3 “(a) PROGRAM NAME.—The program to provide fi-
 4 nancing to small business concerns by guarantees of loans
 5 under this title, which are funded by debentures guaran-
 6 teed by the Administrator shall be known as the ‘Certified
 7 Development Company Economic Development Loan Pro-
 8 gram’ or the ‘504 Loan Program’.”.

9 **SEC. 5. DEFINITIONS.**

10 Section 103 of the Small Business Investment Act
 11 of 1958 (15 U.S.C. 662) is amended—

12 (1) by striking paragraph (6) and inserting the
 13 following:

14 “(6) the term ‘development company’ means an
 15 entity incorporated under State law with the author-
 16 ity to promote and assist the growth and develop-
 17 ment of small business concerns in the areas in
 18 which it is authorized to operate by the Adminis-
 19 trator;”;

20 (2) in paragraph (16), by striking “and” at the
 21 end;

22 (3) in paragraph (17), by striking the period at
 23 the end and inserting “; and”; and

24 (4) by adding at the end the following:

1 “(18) the term ‘certified development company’
 2 means a development company which the Adminis-
 3 trator has determined meets the criteria of section
 4 506.”.

5 **SEC. 6. ELIGIBILITY OF DEVELOPMENT COMPANIES TO BE**
 6 **DESIGNATED AS CERTIFIED DEVELOPMENT**
 7 **COMPANIES; AUTHORITY TO ISSUE DEBEN-**
 8 **TURES; PROVIDING AN AREA OF OPER-**
 9 **ATIONAL AUTHORITY, FUNDING RESTRIC-**
 10 **TIONS, AND ETHICAL REQUIREMENTS.**

11 Section 506 of the Small Business Investment Act
 12 of 1958 (15 U.S.C. 697c) is amended to read as follows:

13 **“SEC. 506. CERTIFIED DEVELOPMENT COMPANIES.**

14 “(a) **AUTHORITY TO ISSUE DEBENTURES.**—A devel-
 15 opment company may issue debentures under this title if
 16 the Administrator certifies that the company meets the
 17 following criteria:

18 “(1) **SIZE.**—

19 “(A) **IN GENERAL.**—Except as provided in
 20 subparagraph (B), the development company
 21 shall be a small business concern with fewer
 22 than 500 employees, and shall not be under the
 23 control of any entity that does not meet the size
 24 standards established by the Administrator for
 25 a small business concern.

1 “(B) EXCEPTION.—Any development com-
2 pany that was certified by the Administrator
3 prior to December 31, 2005, may continue to
4 issue debentures under this title.

5 “(2) PURPOSE.—A primary purpose of the de-
6 velopment company shall be to benefit the commu-
7 nity by fostering economic development to create and
8 preserve jobs and stimulate private investment.

9 “(3) PRIMARY FUNCTION.—A primary function
10 of the development company shall be to accomplish
11 its purpose by providing long term financing to
12 small business concerns under the 504 Loan Pro-
13 gram. The development company may also provide
14 or support other local economic development activi-
15 ties to assist the community.

16 “(4) NONPROFIT STATUS.—

17 “(A) IN GENERAL.—Except as provided in
18 subparagraph (B), the development company
19 shall be a nonprofit corporation.

20 “(B) EXCEPTION.—A development com-
21 pany certified by the Administrator prior to
22 January 1, 1987, may continue to issue deben-
23 tures under this title and retain its status as a
24 for-profit enterprise.

1 “(5) GOOD STANDING.—The development com-
 2 pany shall be in compliance with all laws, including
 3 taxation requirements, in the State in which such
 4 company is incorporated and in any other State in
 5 which it conducts business.

6 “(6) MEMBERSHIP OF DEVELOPMENT COM-
 7 PANY.—There shall—

8 “(A) be not fewer than 25 members of the
 9 development company (or owners or stock-
 10 holders, if the corporation is a for-profit enti-
 11 ty)—

12 “(i) none of whom may own or control
 13 more than 10 percent of the voting mem-
 14 bership of the company; and

15 “(ii) all of whom shall be residents of
 16 the area of operations of the development
 17 company, as specified by the Administrator
 18 under subsection (b); and

19 “(B) be at least 1 member of the develop-
 20 ment company from each of—

21 “(i) government organizations that
 22 are responsible for economic development;

23 “(ii) financial institutions that provide
 24 commercial long term fixed asset financing;

1 “(iii) community organizations that
2 are dedicated to economic development;
3 and

4 “(iv) businesses.

5 “(7) BOARD OF DIRECTORS.—

6 “(A) IN GENERAL.—The development com-
7 pany shall have a board of directors.

8 “(B) MEMBERS OF BOARD.—Each member
9 of the board of directors of the development
10 company shall be—

11 “(i) a member of the development
12 company;

13 “(ii) elected by the members of the
14 development company; and

15 “(iii) a resident of the area of oper-
16 ations of the development company, as
17 specified by the Administrator under sub-
18 section (b).

19 “(C) REPRESENTATION OF ORGANIZA-
20 TIONS AND INSTITUTIONS.—There shall be at
21 least 1 member of the board of directors from
22 not fewer than 3 of the 4 organizations and in-
23 stitutions described in paragraph (6)(B), none
24 of whom is in a position to control the develop-
25 ment company.

1 “(D) MEETINGS.—The board of directors
2 of the development company shall meet on a
3 regular basis to make policy decisions for such
4 company.

5 “(8) PROFESSIONAL MANAGEMENT AND
6 STAFF.—

7 “(A) IN GENERAL.—The development com-
8 pany shall have full-time professional manage-
9 ment, including a chief executive officer to man-
10 age daily operations, and a full-time profes-
11 sional staff qualified to market the 504 Loan
12 Program and handle all aspects of loan ap-
13 proval and servicing, including liquidation, if
14 appropriate.

15 “(B) INDEPENDENCE.—Except as pro-
16 vided in subparagraph (C), the development
17 company shall be independently managed and
18 operated to pursue the economic development
19 mission of the company and shall employ its
20 chief executive officer directly.

21 “(C) EXCEPTIONS.—

22 “(i) AFFILIATION.—A development
23 company may be an affiliate of another
24 local nonprofit service corporation (other
25 than a development company) whose mis-

1 sion is to support economic development in
2 the area in which the development com-
3 pany operates.

4 “(ii) MEMBERS OF BOARD.—A devel-
5 opment company and a local nonprofit
6 service corporation with which it is affili-
7 ated may have in common some, but not
8 all, members of their respective boards of
9 directors.

10 “(iii) STAFFING.—Except as provided
11 in clause (iv), a development company may
12 satisfy the requirement for full-time pro-
13 fessional staff under subparagraph (A) by
14 contracting for the required staffing with
15 an entity with which the development com-
16 pany is affiliated, including—

17 “(I) a local nonprofit service cor-
18 poration;

19 “(II) a nonprofit affiliate of a
20 local nonprofit service corporation;

21 “(III) an entity wholly or par-
22 tially operated by a governmental
23 agency; or

24 “(IV) another entity approved by
25 the Administrator.

1 “(iv) RURAL AREAS.—A development
2 company located in a rural area, as defined
3 in section 501(f), may satisfy the require-
4 ments of a full-time professional staff and
5 professional management ability under
6 subparagraph (A) by contracting with an-
7 other certified development company that
8 has such staff and management ability and
9 is located in the same general area in
10 which the development company is located.

11 “(v) FOR-PROFIT COMPANIES.—A de-
12 velopment company that was certified by
13 the Administrator prior to January 1,
14 2006, and that has contracted with a for-
15 profit company to provide professional
16 staff as of such date may continue to con-
17 tract for staffing with a for-profit com-
18 pany.

19 “(b) AREA OF OPERATIONS.—

20 “(1) IN GENERAL.—The Administrator shall
21 specify the area in which an applicant is certified to
22 provide assistance to small business concerns under
23 this title.

24 “(2) INITIAL AREA.—The Administrator shall
25 not authorize an applicant to provide assistance

1 under paragraph (1) outside of the State of incorpo-
2 ration of the development company when first au-
3 thorizing an applicant to provide assistance under
4 this title, unless it proposes to operate in a local eco-
5 nomic area under subsection (c).

6 “(c) LOCAL ECONOMIC AREA REQUIREMENT AND
7 EXEMPTION.—

8 “(1) DEFINITION.—In this subsection, the term
9 ‘local economic area’ means an area, as determined
10 by the Administrator, that—

11 “(A) is in a State other than the State in
12 which a development company is incorporated;

13 “(B) shares a border with the area of oper-
14 ations of the development company; and

15 “(C) is a part of a local trade area (includ-
16 ing a city that is bisected by a State line and
17 a metropolitan statistical area that is bisected
18 by a State line) that is contiguous to the area
19 of operations of the development company.

20 “(2) EXEMPTION.—An applicant operating in a
21 local economic area shall not be deemed to be oper-
22 ating in a multistate area, and shall not be required
23 to comply with the requirements of multistate oper-
24 ation.

1 “(d) MULTISTATE OPERATION.—After a development
 2 company has demonstrated its ability to provide financial
 3 assistance in its area of operations, it may request the Ad-
 4 ministrator to authorize the development company to oper-
 5 ate as a multistate certified development company and to
 6 finance small business concerns under this title in a State
 7 other than the State in which the development company
 8 is incorporated, if —

9 “(1) such State is contiguous to the State in
 10 which the development company is incorporated, ex-
 11 cept that the States of Alaska and Hawaii shall be
 12 deemed to be contiguous to any State abutting the
 13 Pacific ocean;

14 “(2) the development company demonstrates its
 15 proficiency in making and servicing loans under the
 16 504 Loan Program by—

17 “(A) requesting and receiving designation
 18 as an accredited lender under section 507 or a
 19 premier certified lender under section 508; and

20 “(B) meeting or exceeding performance
 21 standards established by the Administrator;

22 “(3) the development company adds additional
 23 members of the development company from such
 24 State that—

1 “(A) meet the requirements of subsection
2 (a)(6); and

3 “(B) are residents of such State;

4 “(4) the development company adds at least 1
5 member to its board of directors from such State;
6 and

7 “(5) the development company meets such
8 other criteria or comply with such conditions as the
9 Administrator may require.

10 “(e) PROCESSING OF EXPANSION APPLICATIONS.—
11 Not later than 30 days after the date of receipt of an ap-
12 plication under subsection (d), the Administrator shall de-
13 termine whether the development company meets the re-
14 quirements of subsection (d) and accept or reject the re-
15 quest of a development company for approval as a
16 multistate company in writing.

17 “(f) USE OF EXCESS FUNDS.—Any funds generated
18 by a development company from making 504 loans which
19 remain after payment of staff, operating and overhead ex-
20 penses shall be retained by the development company as
21 a reserve for—

22 “(1) future operations;

23 “(2) expanding the area in which the certified
24 development company operates or proposes to oper-

1 ate as a multistate development company under sub-
2 section (d); or

3 “(3) investment in other local community or
4 economic development activity in the State from
5 which such funds were generated or in a local eco-
6 nomic area which includes part of the State of incor-
7 poration.

8 “(g) ETHICAL REQUIREMENTS.—

9 “(1) DEFINITIONS.—In this subsection—

10 “(A) the term ‘close relative’ means a
11 spouse, parent, child, sibling, or the spouse of
12 a parent, child, or sibling; and

13 “(B) the term ‘position of control’ means
14 an officer, member of the board of directors,
15 manager, chief executive officer, agent involved
16 in the loan process, key employee or similar
17 management position of a certified development
18 company and, if the development company is a
19 for-profit entity, a holder of 20 percent or more
20 of the value of the stock of the certified devel-
21 opment.

22 “(2) CONFLICT OF INTEREST.—A certified de-
23 velopment company, and the officers, employees, and
24 other staff of a certified development company, shall
25 at all times act ethically and avoid activities which

1 constitute a conflict of interest or appear to con-
2 stitute a conflict of interest.

3 “(3) CONTROL OF MULTIPLE COMPANIES.—

4 “(A) IN GENERAL.—No person, either di-
5 rectly or indirectly, may hold a position of con-
6 trol on more than 1 certified development com-
7 pany.

8 “(B) RELATIVES.—No close relative of an
9 individual who holds a position of control in a
10 certified development company may hold a posi-
11 tion of control in a certified development com-
12 pany, except for the certified development com-
13 pany in which the individual serves.

14 “(4) PROHIBITED CONFLICT IN PROJECT
15 LOANS.—

16 “(A) IN GENERAL.—Except as provided in
17 subparagraph (B), no certified development
18 company may—

19 “(i) recommend or approve a guar-
20 antee of a debenture by the Administrator
21 as part of a project under the 504 Loan
22 Program that is collateralized by a second
23 lien position on the property being con-
24 structed or acquired; and

1 “(ii) provide, or be affiliated with a
2 corporation or other entity which directly
3 or indirectly provides financing
4 collateralized by a first lien on the same
5 property.

6 “(B) EXCEPTION.—A business develop-
7 ment company that was participating as a first
8 mortgage lender under the 504 Loan Program
9 in fiscal year 2004 or 2005, either directly or
10 through an affiliate, may continue to do so.

11 “(5) OTHER ECONOMIC DEVELOPMENT ACTIVI-
12 TIES.—

13 “(A) MULTIPLE PROGRAMS.—Operation of
14 multiple programs to assist small business con-
15 cerns in order for a certified development com-
16 pany to carry out its economic development
17 mission shall not be deemed a conflict of inter-
18 est for purposes of this section.

19 “(B) OTHER SOURCES OF FUNDING.—

20 “(i) IN GENERAL.—Except as pro-
21 vided in clause (ii), and notwithstanding
22 any other provision of law, no certified de-
23 velopment company may accept funding
24 from any source, including any department
25 or agency of the Federal Government—

1 “(I) if such funding includes any
 2 conditions, priorities or restrictions
 3 upon the types of small business con-
 4 cerns to which the certified develop-
 5 ment company may provide financial
 6 assistance under this title; or

7 “(II) if such funding includes
 8 any conditions or imposes any require-
 9 ments, directly or indirectly, upon any
 10 recipient of assistance under this title.

11 “(ii) EXCEPTION.—Clause (i) shall
 12 not apply if the source of funding de-
 13 scribed in clause (i) provides all of the fi-
 14 nancial assistance to be delivered by the
 15 certified development company to the small
 16 business concern and such conditions, pri-
 17 orities, or restrictions are limited solely to
 18 the financial assistance so provided.

19 “(h) REPORTING.—A certified development company
 20 shall submit an annual report to the Administration re-
 21 garding—

22 “(1) the use of excess funds by the company
 23 under subsection (f); and

1 “(2) the involvement of the company with local
2 economic development activities in every State in
3 which the certified development company operates.”.

4 **SEC. 7. CONFORMING AMENDMENTS.**

5 Section 503 of the Small Business Investment Act
6 of 1958 (15 U.S.C. 697) is amended—

7 (1) in subsection (a)(1), by striking “qualified
8 State or local development company” and inserting
9 “certified development company”; and

10 (2) by striking subsection (e) and inserting the
11 following:

12 “(e) Notwithstanding any other provision of law, a
13 certified development company is authorized to prepare
14 applications for deferred participation loans under section
15 7(a) of the Small Business Act, to service such loans, and
16 to charge a reasonable fee for servicing such loans.”.

17 **SEC. 8. DEFINITION OF RURAL AREAS.**

18 Section 501 of the Small Business Investment Act
19 of 1958 (15 U.S.C. 695) is amended by adding at the end
20 the following:

21 “(f) As used in this section, the terms ‘rural’ and
22 ‘rural area’ include any area other than—

23 “(1) a city or town that has a population great-
24 er than 50,000 inhabitants; and

1 “(2) the urbanized area contiguous and adja-
2 cent to such a city or town.”.

3 **SEC. 9. BUSINESSES IN LOW-INCOME AREAS.**

4 Section 501(d)(3) of the Small Business Investment
5 Act of 1958 (15 U.S.C. 695(d)(3)) is amended—

6 (1) in subparagraph (G), by striking “or” at
7 the end;

8 (2) in subparagraph (H), by striking the period
9 at the end and inserting “, or”; and

10 (3) by adding at the end the following:

11 “(I) expansion of businesses in low-income
12 communities (defined as any area which would
13 be eligible for new markets tax credits under
14 section 45D(a) of the Internal Revenue Code of
15 1986, or regulations issued thereunder).”.

16 **SEC. 10. COMBINATIONS OF CERTAIN GOALS.**

17 Section 501(d) of the Small Business Investment Act
18 of 1958 (15 U.S.C. 695(d)) is amended by inserting before
19 the undesignated matter at the end the following:

20 “(4) A small business concern which is owned
21 by more than 1 individual, or a corporation whose
22 stock is owned by more than 1 individual, shall be
23 deemed to have achieved a public policy goal under
24 paragraph (3) if not less than 51 percent of the
25 small business concern is owned by individuals who

1 are in 1 or a combination of the groups described as
 2 public policy goals in subparagraph (C) and (E) of
 3 paragraph (3).”.

4 **SEC. 11. REPEAL OF SUNSET ON RESERVE REQUIREMENTS**
 5 **FOR PREMIER CERTIFIED LENDERS.**

6 Section 508(c)(6)(B) of the Small Business Invest-
 7 ment Act of 1958 (15 U.S.C. 697e(c)(6)(B)) is amend-
 8 ed—

9 (1) in the subparagraph heading, by striking
 10 “TEMPORARY REDUCTION” and inserting “REDUC-
 11 TION”; and

12 (2) by striking “Notwithstanding subparagraph
 13 (A), during the 2-year period beginning on the date
 14 that is 90 days after the date of the enactment of
 15 this subparagraph, the” and inserting “The”.

16 **SEC. 12. REFINANCING.**

17 Section 502 of the Small Business Investment Act
 18 of 1958 (15 U.S.C. 696) is amended by adding at the end
 19 the following:

20 “(7) PERMISSIBLE DEBT REFINANCING.—

21 “(A) IN GENERAL.—Any financing ap-
 22 proved under this title may also include a lim-
 23 ited amount of debt refinancing, as described in
 24 subparagraph (B).

1 “(B) EXPANSIONS.—If the project for
2 which a financing under this title is sought in-
3 volves the expansion of a small business concern
4 which has existing indebtedness collateralized
5 by fixed assets, any amount of existing indebt-
6 edness that does not exceed $\frac{1}{2}$ of the project
7 cost of the expansion may be refinanced and
8 added to the expansion cost, if—

9 “(i) the existing indebtedness was not
10 financed under the 504 Loan Program or
11 under section 7(a) of the Small Business
12 Act;

13 “(ii) the proceeds of the indebtedness
14 were used to acquire land, including a
15 building situated thereon, to construct a
16 building thereon or to purchase equipment;

17 “(iii) the borrower has been current
18 on all payments due on the existing debt
19 for the 1-year period prior to the date on
20 which the application is submitted; and

21 “(iv) the financing under the 504
22 Loan Program will provide better terms or
23 rate of interest than exists on the existing
24 debt.”.

1 **SEC. 13. FEES.**

2 (a) IN GENERAL.—Section 503(d) of the Small Busi-
3 ness Investment Act of 1958 (15 U.S.C. 697(d)) is amend-
4 ed—

5 (1) by striking paragraph (2);

6 (2) by redesignating paragraph (3) as para-
7 graph (2); and

8 (3) in paragraph (2), as so redesignated, by
9 striking “0.125 percent” and inserting “0.155 per-
10 cent”.

11 (b) REPORTING.—Not later than 2 years after the ef-
12 fective date under subsection (c), the Administrator shall
13 submit to the Committee on Small Business and Entrepre-
14 neurship of the Senate and the Committee on Small Busi-
15 ness of the House of Representatives a report assessing
16 the impact of the change in fees under subsection (a)(3)
17 in fostering economic development.

18 (c) EFFECTIVE DATE.—The amendments made by
19 subsection (a) shall take effect and apply to loans ap-
20 proved under the 504 Loan Program, on or after the date
21 that is 30 days after the date of enactment of this Act.

22 (d) RECOMPUTATION.—Notwithstanding any other
23 provision of law, the Administrator shall recalculate the
24 amount of the fee to be paid by a borrower under section
25 503(b)(7) of the Small Business Investment Act of 1958
26 (15 U.S.C. 697(b)(7)) such that the cost of making guar-

1 antees under the 504 Loan Program is zero after the ef-
 2 fective date under subsection (c).

3 **SEC. 14. ADDITIONAL EQUITY INJECTIONS.**

4 Section 502(3)(B)(ii) of the Small Business Invest-
 5 ment Act of 1958 (15 U.S.C. 696(3)(B)(ii)) is amended
 6 to read as follows:

7 “(ii) FUNDING FROM INSTITU-
 8 TIONS.—If a small business concern that is
 9 required to provide a contribution under
 10 clause (i), (ii) or (iii) of subparagraph
 11 (C)—

12 “(I) provides the minimum
 13 amount required under such subpara-
 14 graph, not less than 50 percent of the
 15 total cost of the project shall come
 16 from financing provided by an institu-
 17 tion described in subclause (I), (II),
 18 or (III) of clause (i) of this subpara-
 19 graph; or

20 “(II) provides more than the
 21 minimum amount required under such
 22 subparagraph, any contribution in ex-
 23 cess of such minimum amount may be
 24 used to reduce the amount required
 25 from an institution described in sub-

1 clause (I), (II), or (III) of clause (i)
 2 of this subparagraph, except that the
 3 amount from such institution may not
 4 be reduced to an amount equal to or
 5 less than the amount of the loan made
 6 by the Administrator.”.

7 **SEC. 15. LOAN LIQUIDATIONS.**

8 Section 510 of the Small Business Investment Act
 9 of 1958 (15 U.S.C. 697g) is amended—

10 (1) by redesignating subsection (e) as sub-
 11 section (g); and

12 (2) by inserting after subsection (d) the fol-
 13 lowing::

14 “(e) PARTICIPATION.—

15 “(1) MANDATORY.—

16 “(A) IN GENERAL.—Any certified develop-
 17 ment company that elects not to apply for au-
 18 thority to foreclose and liquidate defaulted
 19 loans under this section, or that the Adminis-
 20 trator determines to be ineligible for such au-
 21 thority, shall contract with a third-party to per-
 22 form foreclosure and liquidation of defaulted
 23 loans in its portfolio.

24 “(B) APPROVAL OF QUALIFICATIONS AND
 25 TERMS.—A contract under subparagraph (A)

1 shall be contingent upon approval by the Ad-
2 ministrator of the qualifications of the con-
3 tractor and the terms and conditions of liquida-
4 tion activities.

5 “(2) COMMENCEMENT.—This subsection shall
6 not require any certified development company to
7 liquidate defaulted loans until after the date on
8 which the Administrator implements a program to
9 compensate and reimburse certified development
10 companies under subsection (f).

11 “(f) COMPENSATION AND REIMBURSEMENT.—

12 “(1) REIMBURSEMENT OF EXPENSES.—The
13 Administrator shall reimburse each certified develop-
14 ment company for all expenses paid by such com-
15 pany as part of foreclosure and liquidation activities
16 if the expenses—

17 “(A) were approved in advance by the Ad-
18 ministrator, either specifically or generally; or

19 “(B) were incurred by the certified devel-
20 opment company on an emergency basis with-
21 out prior approval from the Administrator, if
22 the Administrator determines that the expenses
23 were reasonable and appropriate.

24 “(2) COMPENSATION FOR RESULTS.—The Ad-
25 ministrator shall develop a schedule to compensate

1 and provide an incentive to certified development
2 companies that foreclose and liquidate defaulted
3 loans, which schedule shall—

4 “(A) be based on a percentage of the net
5 amount recovered;

6 “(B) not exceed a maximum amount; and

7 “(C) not apply to any foreclosure which is
8 conducted under a contract between a develop-
9 ment company and a qualified third-party to
10 perform the foreclosure and liquidation.”.

11 **SEC. 16. CLOSING COSTS.**

12 Section 503(b)(4) of the Small Business Investment
13 Act of 1958 (15 U.S.C. 697(b)(4)) is amended to read
14 as follows:

15 “(4) the aggregate amount of such debenture
16 does not exceed the amount of the loans to be made
17 from the proceeds of such debenture plus, at the
18 election of the borrower, other amounts attributable
19 to the administrative and closing costs of such loans,
20 except for the attorney fees of the borrower;”.

21 **SEC. 17. MAXIMUM 504 AND 7(A) LOAN ELIGIBILITY.**

22 Section 502(2) of the Small Business Investment Act
23 of 1958 (15 U.S.C. 696(2)) is amended by adding at the
24 end the following:

1 “(C) COMBINATION FINANCING.—Financ-
 2 ing under the 504 Loan Program may be pro-
 3 vided to a borrower in the maximum amount
 4 provided in this subsection, and a loan guar-
 5 antee under section 7(a) of the Small Business
 6 Act may be provided to the same borrower, up
 7 to the maximum amount provided in section
 8 7(a)(3)(A) of such Act.”.

9 **SEC. 18. TECHNICAL CORRECTION.**

10 Section 501(e)(2) of the Small Business Investment
 11 Act of 1958 (15 U.S.C. 695(e)(2)) is amended by striking
 12 “outstanding”.

13 **SEC. 19. PREMIER CERTIFIED LENDERS PROGRAM RE-**
 14 **PORT.**

15 (a) IN GENERAL.—Not later than 90 days after the
 16 date of enactment of this Act, the Administrator shall sub-
 17 mit to the Committee on Small Business and Entrepre-
 18 neurship of the Senate and the Committee on Small Busi-
 19 ness of the House of Representatives a report regarding
 20 the operation of the Premier Certified Lenders Program,
 21 during the 3-year period ending on the date of enactment
 22 of this Act.

23 (b) CONTENTS.—The report submitted under sub-
 24 section (a) shall—

1 (1) include the number of loans made under the
2 Premier Certified Lenders Program;

3 (2) describe any difficulties encountered in
4 making such loans; and

5 (3) make recommendations, if any, regarding
6 how to increase the number of loans made under the
7 Premier Certified Lenders Program or streamline
8 such program.

9 **SEC. 20. REGULATIONS.**

10 The Administrator shall—

11 (1) publish proposed regulations to implement
12 this Act and the amendments made by this Act not
13 later than 120 days after the date of enactment of
14 this Act; and

15 (2) publish such regulations in final form not
16 later than 120 days after the date on which pro-
17 posed regulations are published under paragraph
18 (1).

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